

2 to ct
w/order

ORIGINAL

27
8/28/02
~h

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOANN BRISTOW,
Plaintiff

vs.

JACOB C. CLEVINGER and
SPRING GARDEN TOWNSHIP,
Defendants

: CIVIL ACTION - LAW
:
: NO. 1:CV:00-0600
:
: JUDGE RAMBO
:
: JURY TRIAL DEMANDED

FILED
HARRISBURG, PA
AUG 27 2002
MARY E. D'AMOREA, CLERK
Per
Deputy Clerk

DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT

AND NOW, come the Defendants, Jacob C. Clevenger and Spring Garden Township, by and through their attorneys, Lavery, Faherty, Young & Patterson, P.C., and file this Motion to Dismiss Plaintiff's Amended Complaint and in support thereof, aver as follows:

1. Plaintiff, Joann Bristow, initiated this civil action by filing a Complaint on or before April 3, 2000 against Officer Jacob C. Clevenger and his employer, Spring Garden Township.

2. On April 20, 2000, Defendant filed a Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure.

3. By Memorandum and Order dated January 8, 2001, this Honorable Court granted Defendants' Motion to Dismiss Plaintiff's Complaint.

4. On January 16, 2001, Plaintiff filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit.

5. On March 22, 2002, the United States Court of Appeals for the Third Circuit affirmed in part and reversed in part this Honorable Court's Memorandum and Order dated January 8, 2001, and remanded the action to this Honorable Court for further proceedings.

6. By Order dated July 10, 2002, this Honorable Court directed that Plaintiff file an Amended Complaint on or before August 9, 2002. In that Order, this Honorable Court directed that the Amended Complaint shall be complete in all respects and shall follow the admonitions of the Third Circuit Court regarding the preparation of the Amended Complaint.

7. On August 7, 2002, Plaintiff filed an Amended Complaint which was received by undersigned defense counsel on August 12, 2002.

8. In the Amended Complaint, Plaintiff attempts to assert claims pursuant to 42 U.S.C. § 1983 for violation of her Fourth and Fourteenth Amendment rights. The Amended Complaint also purports to assert claims for assault and infliction of emotional distress as supplemental state claims pursuant to 28 U.S.C. § 1367(c).

9. Plaintiff's Amended Complaint fails to assert claims or causes of action for violation of her Fourth and/or Fourteenth Amendment rights against Defendant, Spring Garden Township, upon which relief can be granted.

10. Plaintiff's pendent state tort claims for assault and infliction of emotional distress against Defendant, Spring Garden Township, are barred by application of the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541 et. seq.

11. Plaintiff's Amended Complaint fails to state a claim or cause of action for violation of Plaintiff's Fourth Amendment rights against Defendant Clevenger upon which relief can be granted.

12. To the extent that Plaintiff's Amended Complaint attempts to assert a claim for negligent infliction of emotional distress against

Defendant Clevenger, said claim is barred by application of the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541.

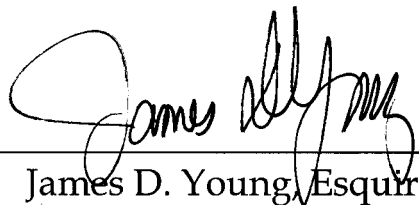
13. In the alternative, Plaintiff's Amended Complaint must be stricken as a matter of law for failure to conform to the Federal Rules of Civil Procedure and/or this Honorable Court's Order dated July 10, 2002.

WHEREFORE, Defendants, Jacob C. Clevenger and Spring Garden Township, respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiff's Amended Complaint and enter the accompanying Court Order.

Respectfully submitted,

Lavery, Faherty, Young &
Patterson, P.C.

By: _____



James D. Young, Esquire
Atty No. 53904
225 Market Street, Suite 304
P.O. Box 1245
Harrisburg, PA 17108-1245
Attys for Defendants,
Jacob C. Clevenger and
Spring Garden Township

DATE: 8/27/02

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOANN BRISTOW,	:	CIVIL ACTION - LAW
Plaintiff	:	
vs.	:	NO. 1:CV:00-0600
	:	
JACOB C. CLEVINGER and	:	JUDGE RAMBO
SPRING GARDEN TOWNSHIP,	:	
Defendants	:	JURY TRIAL DEMANDED

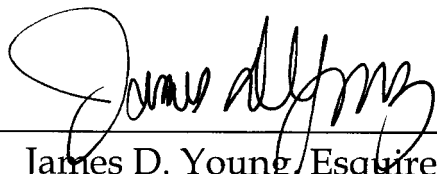
CERTIFICATE OF NONCONCURRENCE

I, James D. Young, Esquire, do hereby certify that I have contacted Don Bailey, Esquire, counsel for Plaintiff, who does not concur in the attached Motion to Dismiss Plaintiff's Amended Complaint.

Respectfully submitted,

LAVERY, FAHERTY, YOUNG &
PATTERSON, P.C.

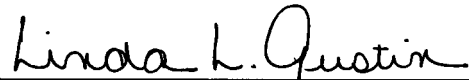
Date: 8/27/02

By: 
James D. Young, Esquire
Attorney I.D. #43904
P. O. Box 1245
Harrisburg, PA 17108-1245
(717) 2323-6633
Attorney for Defendants

CERTIFICATE OF SERVICE

I, Linda L. Gustin, an employee of the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 27th day of August, 2002, I served a true and correct copy of the foregoing **Defendants' Motion to Dismiss Plaintiff's Amended Complaint** via U.S. First Class mail, postage prepaid, addressed as follows:

Don Bailey, Esquire
4311 North Sixth Street
Harrisburg, PA 17110



Linda L. Gustin